

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY S. SANDERS,

Defendant-Appellant.

UNPUBLISHED

November 22, 2005

No. 255451

Oakland Circuit Court

LC No. 03-193964-FH

Before: Murphy, P.J., and Sawyer and Meter, JJ.

MEMORANDUM.

Defendant was convicted by a jury of breaking and entering with the intent to commit a felony or larceny, MCL 750.110. He appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

During the early-morning hours of December 4, 2003, a police officer observed a pick-up truck parked in front of a closed party store. Further investigation revealed that the glass on the front door to the store was broken. The truck was registered to defendant. Inside the truck were defendant's wallet and cell phone, as well as a crow bar with glass fragments on it.

Shortly thereafter, a police officer spotted defendant walking on the street, wearing nothing heavier than a sweater despite freezing temperatures. There were pieces of glass on defendant's clothing. An analysis showed that the glass was of the type found at the crime scene. Defendant also had a cut on his forehead.

During his opening statement, defense counsel told the jury that defendant had been carjacked that night. Counsel went on to elicit testimony from a police witness that when defendant was first investigated, he maintained that he had been carjacked and head-butted. On appeal, defendant summarizes evidence that he did not flag down the police car when it came into view, did not call 911 from nearby pay phones, and did not visit any all-night businesses to seek aid. He argues that in light of that evidence, introduction of the theory that he had suffered a carjacking was serious error that caused the jurors to view him as a liar.

"In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court is to determine (1) whether counsel's performance was objectively unreasonable and (2) whether the defendant was prejudiced by counsel's defective performance." *People v Rocky*, 237 Mich App 74, 76; 601 NW2d 887 (1999). A defendant making a claim of ineffective

assistance of counsel must overcome a strong presumption that counsel's tactics were matters of sound trial strategy. *People v Henry*, 239 Mich App 140, 146; 607 NW2d 767 (1999).

Defense counsel introduced the carjacking theory for the obvious purpose of explaining why defendant was found separated from his truck, wounded, underdressed, and carrying glass fragments in his clothing on the night in question. Even though the evidence indicated that defendant did not on that occasion behave as one would expect of a recent victim of such violence, that theory nonetheless stood as the only innocent explanation of the circumstances under which defendant was apprehended.

Because there was a legitimate strategic reason to introduce the carjacking theory, defendant's claim of ineffective assistance must fail. *Id.*

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter